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May 3, 2005

By Electronic Comment Filing System

Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MB Docket 03-15
File No. BFRECT-20050210AUC

Dear Ms. Dortch:

Attached hereto on behalf of State Board of Education, State of Idaho, is its "Request for Acceptance of Reply and Reply to Paxson Response" with regard to the above-referenced Digital Channel Election Form - First Round Election.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for State Board of Education,
State of Idaho

Enclosure

cc: Ms. Nazifa Sawez (w/enc.) **By Hand Delivery**

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	MB Docket 03-15
)	
Negotiated Channel Arrangement for)	File No. BFRECT-20050210AWF
KGPX(TV), Facility Identification No. 81694,)	
Spokane, Washington)	

Directed to: Chief, Media Bureau

REQUEST FOR ACCEPTANCE OF REPLY AND REPLY TO PAXSON RESPONSE

State Board of Education, State of Idaho, which operates as Idaho Public Television ("IPT") and is licensee of noncommercial educational stations KUID-TV, Facility Identification Number 62382, Moscow, Idaho, and KCDT(TV), Facility Identification Number 62424, Coeur d'Alene, Idaho, by its attorneys, hereby submits its Request for Acceptance of Reply and Reply to Paxson Response with regard to the above-captioned "Negotiated Channel Election Arrangement" ("NCA") for which Paxson Spokane License, Inc. ("Paxson"), licensee of KGPX(TV), Spokane, Washington, has sought Commission approval. With respect thereto, the following is stated:

I. Request for Acceptance of Reply

1. IPT previously submitted a "Request for Acceptance of Comments and Comments in Opposition to Negotiated Channel Election Arrangement" with regard to the above-captioned NCA. Therein, IPT sought to correct the previous misstatements of Paxson with regard to the claimed NCA and to provide further information necessary to correct the record of this proceeding. Paxson has now submitted a vitriolic response in which it has accused IPT of making false statements. Paxson

can make these accusations, however, only by misstating the arguments advanced by IPT and by itself mischaracterizing the facts. IPT acknowledges one oversight, but it made no false statements. Accordingly, it is once again necessary to set the record straight, and IPT therefore requests acceptance of its Reply.

II. Reply to Paxson Response

2. Paxson has apparently missed the bottom line of IPT's previous submission. Stated simply, that is that Paxson falsely indicated that IPT's stations KUID-TV and KCDT(TV) are parties to an NCA with Paxson when, in point of fact, IPT submitted an objection to the proposed NCA to Paxson. Paxson's self-serving assertion that this objection was not "reasonable" does not change the fact that IPT did object and so informed Paxson prior to the filing of its Form 382. Likewise, Paxson's dismissal of IPT's objections does not turn IPT's objection into agreement, nor does it make IPT a party to anything. Paxson's judgment of the merits of the opposition raised by IPT cannot change the fact of its existence. Paxson's assertions also cannot alter the fact that Paxson indicated that IPT had agreed to the arrangement when it knew that IPT had done the contrary and had actually objected.

3. It is this false statement which formed the basis of IPT's previously filed Comments in Opposition. While IPT certainly indicated the reason behind the objection which it had raised with Paxson, it did not attempt to provide any engineering that actual interference to IPT's facilities would occur. While Paxson may believe that IPT's concern about interference is unreasonable, Paxson's belief does not change the fact that IPT has had such concerns, which it has expressed to Paxson. Although Paxson may believe that IPT's fears are unfounded, and may even be able to provide information that could allay them, Paxson's belief does not make false the fact of IPT's stated

objection or the concerns about interference which formed the stated basis of that objection.

4. Paxson also takes umbrage at the suggestion that it is attempting to circumvent the rule making process by unilaterally selecting a new channel at this stage. Paxson points to a petition for rule making which it filed on March 22, 2004, and claims that IPT must have been aware of that petition. In point of fact, IPT was not aware of that petition, and acknowledges its oversight in that regard. Nonetheless, the fact remains that the petition to which Paxson points did **not** request a change in channel for KGPX-DT to Channel 43. Rather, contrary to settled Commission policy, Paxson sought the allotment of Channel 43 as a paired channel for KGPX.¹ Thus, Paxson was not unequivocally seeking to change its channel to Channel 43, nor can it necessarily be concluded from that petition that Paxson intended for Channel 43 to be its final DTV channel after the transition. In any event, however, it is clear that no rule making proposal to change the allotment for KGPX to Channel 43 has progressed through the rule making process even to the point at which notice is given to the public and comments are sought. Therefore, it remains the case that Paxson apparently is seeking to avoid that notice and comment process by unilaterally selecting a new channel at this time. Despite Paxson's strident claims of a valid NCA, it cannot be disputed that, at least in the instance of IPT, there were no negotiations, and there was no agreement. Judging from the other objections that have been received, it appears that the same lack of negotiations and agreement may hold true for other parties as well. Paxson has not demonstrated that it provided any party with more than a form letter and opportunity to "check the box" to respond. Whether the Commission will consider the mere lack of expressed objection from some parties to constitute an actual agreement

¹ Paxson also acknowledged therein that recent Commission decisions had denied similar requests, but noted that it was appealing those denials.

is obviously a matter for it to decide.

WHEREFORE, the premises considered, IPT respectfully requests that the Commission disapprove Paxson's above-captioned First Round Channel Election.

Respectfully submitted,

STATE BOARD OF EDUCATION,

STATE OF IDAHO

By:


Anne Goodwin Crump

Its Attorney

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May 3, 2005

CERTIFICATE OF SERVICE

I, Evelyn M. Thompson, a Secretary with the law firm of Fletcher, Heald & Hildreth PLC, certify that I have this 3rd day of May, 2005, caused to be sent a copy of the foregoing Request for Acceptance of Reply and Reply to Paxson Response to be served by overnight mail on the following:

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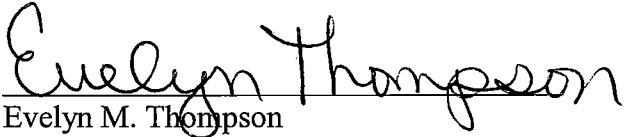
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